IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Sajjan Kumar Raniwala and Ors. vs. The Edward Mills Company Ltd.

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S.B. Civil First Appeal No.2/1989 under Section 96 C.P.C. against the judgment and decree dated 04.09.1987 passed by Shri Mandal Prasad Bohra RHJS, Additional District Judge,Beawar in Civil Suit No.210/1985 decreeing the suit of the plaintiff respondent for Rs.2,87,563.12 paise.

Date of Judgment :::::: November 03, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.R.P.Agarwal for appellants.

BY THE COURT (ORAL):-

The facts in brief giving rise to this appeal are that the plaintiff respondent filed a suit against Seth

Totalalji Raniwala in his personal capacity as well as in his capacity as Manager and Karta of the Joint Family under the name and style of Seth Champalal-Ram Swaroop and his btothers Shri Heeralal, Ganeshilal and Jai Kumar as well as the defendant appellants Sundarlal, Pritam Kumar and Smt. Vidya Bai for realisation of a sum of Rs.2,41,007.70 paise on the basis of running account and for the balances due up to 31.12.1957. It was mentioned in the plaint that on the basis of the Khata for the years 1958, 1959, 1960 and 1961 Rs.2,41,007.70 along with interest @ 6% per annum was outstanding. It was also mentioned that under a notification dated 2.4.1960 issued under Section 18A of the Industries Development and Regulation Act, 1951 the administration of the plaintiff company was taken over by the Central Government and that Shri Mangal Behari, IAS was appointed as the Administrator.

In the written statement, the defendants denied the averments of the plaint and stated that no amount was due against them and also averred that appointment of the authorised controller under the Industries Development and Regulation Act,1951 was illegal and was not in accordance with the provisions of the Act. It was also mentioned that the plaintiff was not entitled for compound interest. On behalf of the defendant appellants it was prayed that the

suit be dismissed. On 2nd January, 1970 the written statement was also amended.

After framing issues, recording evidence of the parties and hearing learned counsel for the parties the learned trial court vide judgment and decree dated 8th December, 1971 decreed the suit of the plaintiff-respondent for Rs.2,41,007.70/-. This judgment and decree was challenged by the appellants by preferring S.B.Civil First Appeal No.55/1972 and this Court vide judgment dated 12th April,1985 allowed the appeal, set aside the judgment and decree and remanded the case to the court of Additional District Judge, Ajmer with a direction to determine the principal and interest separately and pass the decree thereafter in accordance with Section 27 of the Rajasthan Money Lenders Act. It was further directed that the trial court would confine himself to the limited question that the defendant appellants are not liable to pay interest in excess of the principal as envisaged by Section 27 of the Act which is retrospective in operation. This Court further directed that in the decree that may be passed now, it may be incorporated, as was done in the judgment under appeal, that the defendants would be responsible to pay the decreetal amount as members of the Joint Family of Champalal-Ram Swaroop and that the plaintiff will also be

entitled to future interest @ 6% per annum. The appellants were also made liable to pay costs of the appeal to the respondents. After remand, the suit was transferred from the Court of Additional District Judge, Ajmer to the court of Additional District Judge, Beawar. The learned trial court after hearing both the sides vide impugned judgment dated 4th September, 1987 decreed the suit of the plaintiff respondent for Rs.2,87,563.12/-. Hence, this appeal.

Heard learned counsel for the appellants.

Learned counsel for the appellants has contended that the learned trial court has neither properly appreciated nor critically examined the evidence of the parties and thus, committed error in recording finding in favour of the plaintiff and in decreeing the suit of the plaintiff respondent. It is also contended that the principal sum which was due against the appellants was Rs.1,78,781.56/- and the interest which accrued on this amount comes to Rs.58,625.74/- but the learned trial court has misread and misinterpreted the directions of the earlier order of this Court regarding awarding interest and instead of granting the interest actually due, has granted interest equivalent to the principal amount. Counsel further contended that on the date of filing of the suit, an amount of

Rs.2,37,407.30/- was due against the defendant appellants out of which an amount of Rs.70,000/- was recovered during execution and thus, an amount of Rs.1,67,407.30/- remained payable to the plaintiff. On this strength, learned counsel for the appellants prayed for modification of the decree to the extent of Rs.1,67,407.30/-.

After hearing learned counsel for the appellants, I have gone through the material and evidence available on record as well as the impugned judgment.

Sofar as principal amount of Rs.1,78,781.56/- is concerned, there is no dispute for the same. As regards the interest, suffice it to mention that even according to the calculations and demand of the plaintiff, the total interest amount due against the defendant appellants comes to Rs.58,625.74/- (Rs.2467.59, Rs.21,716.76/-, Rs.14,094.57/- and Rs.20,346.82/-). From the impugned judgment it seems that the learned trial court has totally misread and misinterpreted directions of the earlier order and also the provisions of Section 27 of the Money Lenders Act. Section 27 (1) of the Act provides that no money-lender shall recover towards the interest in respect of any loan advanced by him, an amount in excess of the amount of

principal. According to Section 27 of the Act, the interest amount cannot exceed the principal sum but it does not mean that if the interest amount comes less than the principal sum, interest equivalent to the principal sum has to be awarded. In this view of the matter, I am of the opinion that the learned trial court has committed error in awarding interest equivalent to the principal sum when the actual interest amount as per the calculation of the plaintiff comes to Rs.58,625.74/-.

For the discussions above, the first appeal is allowed in part and it is held that the plaintiff respondent is entitled to claim Rs. 58,625.74/- as interest, actually due on the principal sum of Rs.1,78,781.56 and after deducting Rs.70,000/- already recovered from the appellants during execution, the plaintiff respondent is entitled to recover Rs.1,67,407.30/- with interest at the rate of 6% per annum from the date of filing the suit till realisation. The impugned decree is modified to this extent.

(K.C.Sharma),J.

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